



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY-048-FOR; Docket ID OSM-2020-0005
S1D1S SS08011000 SX064A000 212S180110;
S2D2S SS08011000 SX064A000 21XS501520]

Wyoming Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; opening of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Wyoming Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter, the Wyoming Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes extensive revisions to its Plan in response to a letter sent from OSMRE and to improve the Plan's readability and operational efficiency. These changes are being submitted in response to legislative and regulatory changes made under SMCRA. This document gives the times and locations that the Wyoming plan and proposed amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t.

[Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of

publication in the Federal Register]. We will accept requests to speak at a public hearing until 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by SATS No. WY-048-FOR, by any of the following methods:

- Mail/Hand Delivery: Mr. Jeffrey Fleischman, Director, Denver Field Division; Office of Surface Mining Reclamation and Enforcement; Casper Area Office; 150 East “B” Street, Room 1018, PO Box 11018, Casper, Wyoming 82601.
- Fax: (307) 261-6552.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see "**DATES**") or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Wyoming plan, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours,

Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Area Office or the full text of the plan amendment is available for you to read at <http://www.regulations.gov>.

Jeffrey Fleischman, Director Denver Field Division,
Office of Surface Mining Reclamation and Enforcement,
Dick Cheney Federal Building,
150 East B Street, Room 1018,
Casper, Wyoming 82601-1018.
Telephone: (307) 261-6550.
E-mail: jfleischman@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Alan Edwards, AML Administrator,
Wyoming Department of Environmental Quality,
200 West 17th Street,
Cheyenne, Wyoming 82002,
Telephone: 307-777-7062.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Division Chief,
Casper Area Office. Office of Surface Mining Reclamation and Enforcement, Dick
Cheney Federal Building, PO Box 11018, 150 East B Street Casper, Wyoming 82601-
1018. Telephone: (307) 261-6555. E-mail: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Plan
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

I. Background on the Wyoming Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On February 14, 1983, the Secretary of the Interior approved Wyoming's AMLR Plan. You can find general background information on the Wyoming Plan, including the Secretary's findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). OSM announced in the May 25, 1984, **Federal Register** (49 FR 22139), the Director's decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Plan. Wyoming could then proceed in reclaiming low priority non-coal projects. The Director accepted Wyoming's proposal that it would seek immediate funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Plan. You can find later actions concerning Wyoming's Plan and plan amendments at 30 CFR 950.35.

II. Description of the Proposed Amendment

On March 6, 2019, OSMRE issued a letter to Wyoming, under the authority of 30 CFR 884.15, directing the State to update its Reclamation Plan to meet the requirements of SMCRA as revised on December 20, 2006 as part of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), and the implementing federal regulations as revised on November 14, 2008 (73 FR 67576) and February 5, 2015 (80 FR 6435). OSMRE provided Wyoming with a summary of these changes to the Federal program and a description of the potentially required State Plan amendments in the March 6, 2019 letter.

By letter dated July 21, 2020, Wyoming submitted this proposed amendment to implement the required changes identified in OSMRE's letter as well as additional changes proposed at the State's initiative to make the Wyoming Plan more reader friendly. The proposed amendment would repeal and replace Wyoming's existing AML Plan.

Wyoming's proposed plan amendment:

1. Reorganizes the Wyoming Plan to implement the required changes identified in OSMRE's March 6, 2019 letter.
2. Restructures the Wyoming Plan to be more reader friendly, by removing excess narrative and instead incorporating required information by reference.
3. Revises the Wyoming Plan to include an updated Attorney General's opinion, which confirms that the Wyoming Department of Environmental Quality continues to have the legal authority to oversee and implement Wyoming's AMLR Program.

4. Incorporates in the Wyoming Plan, the provisions from 30 CFR 875.19, **Federal Register** (80 FR 6435), which extend limited liability protection to non-coal reclamation projects.

5. Reaffirms in the Wyoming Plan, that non-coal reclamation activities will reflect the priorities under Title IV, Section 411(c) and 30 CFR 875.15.

6. Identifies in the Wyoming Plan, that the first priority for reclamation shall be for high priority coal, but reserves the Wyoming AML Program's ability to reclaim non-coal land, water, and facilities as allowed by Title IV, Section 411(b) through (g), with approval by OSMRE and after the issuance of an Authorization to Proceed (ATP) which is required for all projects.

7. Acknowledges in the Wyoming Plan, that emergency conditions may arise at times which require quick responses and outlines the processes by which such emergency conditions are addressed, because the Wyoming AML Program does not have an approved emergency response program under section 410 of SMCRA (30 U.S.C. 1240).

8. Incorporates new language in the Wyoming Plan regarding public records, which reflects a change to the Wyoming AML regulations approved by state statute in 2018.

9. Summarizes in the Wyoming Plan, overall AML Policies and Procedures, including staffing, personnel policies, and the accounting system, as well as describes the processes followed to comply with applicable federal regulations.

The full text of the plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

We are seeking your comments on whether the amendment satisfies the applicable plan approval criteria of 30 CFR 884.14 and 884.15. If we approve the amendment, it will become part of the Wyoming Plan.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any

time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue, on the specified date, until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a Plan amendment to OSMRE for review, our regulations at 30 CFR 884.14 and 884.15, and agency policy require public notification and an opportunity for public comment. We accomplish this by publishing a notice in the **Federal Register** indicating receipt of the proposed amendment and its text or a summary of its terms. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

David Berry, Regional Director

Western Region

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